

Remediation and Redevelopment Division

Michigan Department of Environment, Great Lakes, and Energy

Letter of Credit Part 213.doc
04/21/2020

LETTER OF CREDIT PART 213

This document provides instructions on the use of a Letter of Credit (LOC) to fulfill the requirements for financial assurance pursuant to Section 21309a(2)(f) of Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.21301 *et seq.* These instructions, the attached Letter of Credit Model document (Appendix A), and the Agreement and Acceptance of Terms to the Letter of Credit document (Appendix B) are provided to the public as preliminary guidance as to the content, format, and terms of the LOC Financial Assurance Mechanism (FAM) and are not intended, nor can they be relied upon to create any substantive or procedural rights by any other party.

The Michigan Department of Environment, Great Lakes, and Energy (EGLE) will not accept an LOC as a FAM, unless the Agreement and Acceptance of Terms to the Letter of Credit (Appendix B) is finalized by completing the form with the appropriate entries and signed by the parties as set forth in Appendix B.

Pursuant to Section 21309a of the NREPA, if initial actions under Section 21307 have not resulted in the completion of corrective action, an owner or operator that is liable under Section 21323a shall prepare a corrective action plan to address contamination at the site. If the CAP includes the operation of a mechanical soil or groundwater remediation system, or both, a FAM to pay for monitoring, operation, and maintenance necessary to assure the effectiveness and integrity of the corrective action remediation system is required.

An LOC is a commitment from a financial institution (Issuing Institution) to substitute its credit for another party's credit and obligates the Issuing Institution to make payment whenever the specifications for withdrawal are present and the LOC is presented. The LOC represents an independent obligation of the Issuing Institution.

If a person elects to use an LOC to meet its financial assurance obligations (Designated Party), the LOC must be executed by the Issuing Institution. The LOC shall be:

1. Consistent with the requirements of the Michigan Uniform Commercial Code.
2. Issued by an Issuing Institution that has the appropriate authority and is regulated by a Federal or State agency.
3. Executed on the letterhead of the Issuing Institution; list EGLE as the sole beneficiary; and include the State of Michigan's Federal Tax Identification Number (38-6000134).
4. Worded in accordance with the model LOC provided as attachment A. Any modification to the model language may only be made with the concurrence of EGLE.
5. Irrevocable and issued for a period of at least one year.
6. Automatically extended for at least one year unless the Issuing Institution provides notice to the Designated Party and the Remediation and Redevelopment Division (RRD) Director (EGLE Authorized Representative) at least one hundred twenty (120) days prior to the

LOC's expiration date via certified mail, that it will not extend the LOC beyond the current expiration date (Notice).

7. Issued with a provision that allows EGLE Authorized Representative to draw on the LOC, if the person or entity submitting the CAP fails to provide the EGLE Authorized Representative with an acceptable replacement FAM within ninety (90) days of receipt of the above-referenced Notice.
8. In an amount at least equal to, or greater than, the amount necessary to pay for monitoring, operation, and maintenance, necessary to assure the effectiveness and integrity of the corrective action for the time frame(s) specified in the corrective action plan.

Please contact Mr. Brad Ermisch, Compliance and Enforcement Section, Remediation and Redevelopment Division (RRD), EGLE, at ermischb@michigan.gov or 517-275-1173 for any questions relating to this document or the attached model document; or you may call the RRD main number at 517-284-5087 for assistance.

Drafting Instructions: Copy and paste the text portion of the model document onto appropriate letterhead. Drafting notes and examples appear as ***italicized bold font***, insertion directions appear as ***[italicized bold font within bold brackets]***, and word choices appear as ***[regular bold font within bold brackets]***.

--END OF GUIDANCE AND INSTRUCTIONS--

APPENDIX A

LETTER OF CREDIT MODEL

[insert name of the EGLE Authorized Representative]

Remediation and Redevelopment Division
Michigan Department of Environment, Great Lakes, and Energy
P.O. Box 30426
Lansing, Michigan 48909-7926
Federal Tax Identification No. 38-6000134 (State of Michigan)

Dear **[insert name of the EGLE Authorized Representative]**:

SUBJECT: **[insert name and address of site]**

Facility ID No.: **[insert facility ID number]**; Confirmed Release No. **[insert the confirmed release No. of the release addressed by the corrective action]**

1. **[Insert name of issuing institution]** hereby issues this irrevocable Letter of Credit No. **[insert number]** (LOC) in favor of the Michigan Department of Environment, Great Lakes, and Energy (EGLE) on behalf of **[insert name of person submitting the corrective action plan]** (Designated Party) for the sum of \$**[insert numeric amount]** **[insert amount in written text]:** (_____ and _____/100 dollars), effective immediately, available against EGLE draft(s) at sight drawn on our institution and bearing the clause "Drawn under **[insert name of issuing institution]**'s LOC No. **[insert LOC number]** dated **[effective date of LOC]**" and signed by the EGLE Authorized Representative. We are a bank or financial institution that has the authority to issue LOCs. Our operation is regulated and examined by **[insert name of federal or state agency]**.
2. The purpose of this LOC is to provide financial assurance to EGLE to pay for monitoring, operation, and maintenance necessary to assure the effectiveness and integrity of the corrective action documented in the Final Assessment Report submitted by the Designated Party on **[insert date of submittal]**.
3. This LOC is effective as of **[insert date]** and shall expire on **[insert expiration date which must be at least one (1) year after the effective date]**, but such LOC shall be automatically extended for a period of at least one year each and every subsequent year unless, not less than one hundred and twenty (120) days before the extended expiration date indicated above, we notify the Designated Party and the EGLE Authorized Representative as indicated above. We agree that the one hundred and twenty (120) day period shall begin on the date when both the Designated Party and the EGLE Authorized Representative have received the notice, as evidenced by the return certified mail receipts.
4. The EGLE Authorized Representative may make complete or partial drawing(s) on this LOC. When making a partial drawing, the EGLE Authorized Representative must submit the original LOC to us together with any drawings hereunder for our endorsement of any payments effected by us and/or for cancellation.
 - (a) If, within ninety (90) days of both the Designated Party and the EGLE Authorized Representative's receipt of a notice from us that we have decided not to extend the LOC beyond its current expiration date; the Designated Party fails to make arrangements with us to provide the EGLE Authorized Representative with an extension of the current

expiration date of this LOC or with an acceptable replacement LOC; or fails to make arrangements for another type of financial assurance mechanism acceptable to the EGLE Authorized Representative, the EGLE Authorized Representative may make a complete drawing on this LOC.

- (b) If the Designated Party does not provide for monitoring, operation, and maintenance necessary to assure the effectiveness and integrity of the corrective action as documented in the corrective action plan; and EGLE, after providing a thirty (30) day notice to the Designated Party, implements corrective actions, the EGLE Authorized Representative may draw on the LOC to reimburse EGLE for its costs.
- 5. This LOC is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision, International Chamber of Commerce Publication No. 600) and the Michigan Uniform Commercial Code, where applicable. Where conflicts exist between the Uniform Customs and Practice for Documentary Credits and the Michigan Uniform Commercial Code, the Michigan Uniform Commercial Code shall control.
- 6. We shall honor drafts drawn under and in compliance with the terms of this LOC and these drafts shall be duly honored upon presentation if presented on or after **[insert the effective date of the LOC]**, and on or before **[insert the expiration date of the LOC]**, or by any automatically extended date as provided for in Paragraph 3 of this LOC. The amount of each draft must be endorsed on the reverse of this LOC by the negotiating bank or financial institution.
- 7. We certify that the wording of this LOC is identical to the wording provided by the EGLE Authorized Representative as of the date shown immediately below.

[insert name of Issuing Institution]
[Address or P.O. Box]
[City], [State] [Zip Code]

Signature of Authorized Representative of Issuing Institution

Print or Type Name

Print or Type Title

Date

APPENDIX B

AGREEMENT AND ACCEPTANCE OF TERMS TO THE LETTER OF CREDIT

Name of Designated Party: **[insert name of Designated Party]**

Designated Party's Address: **[insert Designated Party's Address]**

Name of Site: **[insert Name of Site]**

Address of Site: **[insert Address of Site]**

Facility ID No.: **[insert EGLE Facility ID number]**

Confirmed Release No. **[insert the confirmed release No. that is addressed by the corrective action]**

State of Michigan Federal Tax Identification No.: 38-6000134

It is agreed between the Michigan Department of Environment, Great Lakes, and Energy (EGLE), and **[insert name of person submitting Corrective Action Plan]** (Designated Party) that the attached letter of credit (LOC), **[insert LOC reference number]**, in the amount of **[\$[insert numeric amount] [(insert amount in written text)]**, issued by **[insert name of issuing financial institution and address]** on **[insert effective date]**, in the name of and for the sole benefit of EGLE, is accepted as financial assurance to pay for the monitoring, operation, and maintenance necessary to assure the effectiveness and integrity of the corrective action documented in the corrective action plan submitted to EGLE by the Designated Party on **[insert date of submittal]** pursuant to Section 21309a of Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, as part of a final assessment report.

1. This LOC is effective as of **[insert date]** and will renew automatically unless the notice provisions of Paragraph 3 of the LOC are provided, indicating that the LOC will not automatically extend.
2. The EGLE's Authorized Representative (Remediation and Redevelopment Division Director) is the only person who may make a draw upon the LOC if any of the provisions of Paragraph 4 of the LOC occur.
3. The funds in the LOC shall remain in an amount sufficient to cover long-term corrective action costs at the Site for a thirty (30) year period. Sixty (60) days prior to the five (5) year anniversary of the issuing of this LOC and each subsequent five (5) year anniversary, the Designated Party shall provide to EGLE a report containing the actual long-term corrective action costs for the previous five (5) year period and an estimate of the amount of funds necessary to assure long-term corrective action costs for the following thirty (30) year period. If this cost estimate differs from the amount of the LOC, EGLE may determine that adding additional funds to the LOC is warranted.

Michigan Department of Environment, Great Lakes, and Energy Authorized Representative:

By: _____
Signature

Type or print name

Title: _____
Type or print

Date: _____

[insert name of Designated Party], Designated Party:

By: _____
Signature

Type or print name

Title: _____
Type or print

Date: _____

Acknowledged by **[insert name of Issuing Institution]**, Issuing Institution:

By: _____
Signature

Type or print name

Title: _____
Type or print